



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

Located at 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO VIRGINIA MOONS LLC FOR RESTLESS MOONS BREWERY Unpermitted Discharge

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Virginia Moons LLC, regarding the Restless Moons Brewery, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" means the Restless Moons Brewery, a commercial and retail brewing facility located at 120 West Wolfe Street in the City of Harrisonburg, Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
13. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Moons" means Virginia Moons LLC, a limited liability company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Virginia Moons LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
17. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Virginia Moons owns and operates the Restless Moons Brewery Facility.
2. On August 9, 2019, DEQ received notification from the City of Harrisonburg detailing that a hose from brewing equipment at the Facility was connected to the City of Harrisonburg's storm sewer system, which discharges to Blacks Run. On August 9, 2019, DEQ staff investigated and was informed by a Virginia Moons representative that the process wastewater from the brewing process was periodically pumped from a storage basin at the Facility to the storm drain during large storm events. Upon clarification, the wastewater in the pit area was preemptively pumped into the sanitary sewer, prior to forecasted rain events. Inflow of stormwater to the pit occurred, due to grading issues, during larger storm events, and it was that water that was then pumped to the storm sewer. DEQ informed Virginia Moons LLC that the pit was part of a wastewater storage and could not serve both purposes.
3. Blacks Run is located in the Potomac Basin-Shenandoah River Subbasin. Blacks Run is listed in DEQ's 305(b)/303(d) report as impaired for E. coli, Fecal Coliform, and Aquatic Life. The sources of bacteria pollution are listed as Municipal/High Density Urban, Non-Point Sources, Wildlife other than Waterfowl. Aquatic life is listed as impaired by sources of runoff from Non-point Sources and Municipal point sources.
4. On August 19, 2019, DEQ issued NOV No. 2019-VRO-0021 to Virginia Moons for the unpermitted discharge of wastewater to state waters, and for the failure to report the discharge to DEQ within 24 hours.

5. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
6. Va. Code § 62.1-44.5(B) requires that: “Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.”
7. The Regulation, at 9 VAC 25-31-50, also states that, except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
8. The Department has issued no permits or certificates to Virginia Moons.
9. On August 22, 2019, DEQ staff met with a Virginia Moons representative to discuss the NOV. Virginia Moons stated that the pump used to pump out the wastewater was removed, and all wastewater was directed to sanitary sewer as of the date of the meeting. Additionally, Virginia Moons hired a plumber to evaluate the Site, to ensure intrusion from stormwater was minimized and to add additional permanent infrastructure to ensure all wastewater was directed to sanitary sewer. DEQ requested the pictures from Virginia Moons, and asked that they provide an update once the plumber has evaluated and completed repairs.
10. On August 28 and 29, 2019, Virginia Moons submitted documentation detailing that a float switch in the storage basin was installed, so that any time the wastewater begins to rise, the sewer pump will initiate and direct the wastewater to the sanitary sewer. Virginia Moons submitted photos and a video to verify that the violations noted above have been corrected.
11. Blacks Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Based on the results of August 9, 2019 inspection, the August 22, 2019 meeting, and documentation submitted by Virginia Moons on August 28 and 29, 2019, the Board concludes that Virginia Moons has violated Va. Code 62.1-44.5, Va. Code 62.1-44.5(B) and 9 VAC 25-31-50, by discharging wastewater from the Facility and failing to report the discharge to DEQ as described in paragraph C(2) through C(10), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Virginia Moons, and Virginia Moons agrees:

1. To pay a civil charge of \$5,460 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
February 15, 2020	\$ 1,820.00 or balance
April 15, 2020	\$ 1,820.00 or balance
June 15, 2020	\$ 1,820.00 or balance

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Virginia Moons. Within 15 days of receipt of such letter, Virginia Moons shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

4. Virginia Moons shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Virginia Moons shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Virginia Moons for good cause shown by Virginia Moons, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-VRO-0021, dated August 19, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia Moons admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Virginia Moons consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Moons declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia Moons to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia Moons shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia Moons shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Moons shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Virginia Moons. Nevertheless, Virginia Moons agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after Virginia Moons has completed all of the requirements of the Order;
 - b. Virginia Moons petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia Moons.

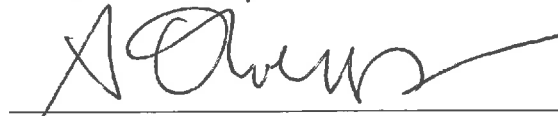
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Moons from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia Moons and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Virginia Moons certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia Moons to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Moons.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Virginia Moons voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of January, 2020.

A handwritten signature in black ink, appearing to read "Amy T. Owens", written over a horizontal line.

Amy T. Owens, Regional Director
Department of Environmental Quality

Virginia Moons LLC voluntarily agrees to the issuance of this Order.

Date: 11/11/19 By: [Signature] Mon, Owner
(Person) (Title)
Virginia Moons LLC

Commonwealth of Virginia
City/County of Henric

The foregoing document was signed and acknowledged before me this 11 day of
Nov., 2019, by Jeffrey Moon who is
owner of Virginia Moons LLC, on behalf of the company.

[Signature]
Notary Public

315967
Registration No.

My commission expires: 02/28/2022

Notary seal:

